IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.61 OF 2004.

Shri Jeetendra R. Deshprabhu,
Landlord, businessman,
major of age,
resident of Pernem, Goa. ... Petitioner

VERSUS

1. Laxmikant Yeshwant Parshekar,
   Principal of Harmal Panchacroshy,
   Higher Secondary School,
   Harmal, Pernem, Goa.

2. Shri Laxman Joshi,
   Editor, Daily Gomantak
   and Publisher, Gomantak Office,
   Gomantak Bhavan, St. Inez,
   Panaji, Goa.

3. Shri Jayant Sambhaji,
   working Editor, Daily Gomantak,
   Gomantak Office, Gomantak Bhavan,
   St. Inez, Panaji, Goa.

4. State. ... Respondents.

Shri S.S. Kantak, Advocate for the Petitioner.

Shri A. Kansar, Advocate for the Respondents
No.2 and 3.

Shri S.N. Sardessai, Public Prosecutor for
the State/Respondent No.4.

CORAM: N. A. BRITTO, J.

DATE: 11TH JUNE, 2004.

ORAL ORDER:

The petitioner who is the complainant in P.Cr.C. No.6/2001/C before the learned J.M.F.C., Mapusa invokes the jurisdiction of this Court under section 482 of the Code of Criminal Procedure 1973 (Code, for short) to correct the

Order dated 11.2.2004 of the learned J.M.F.C., Mapusa closing the case of the said complainant.

2. The complainant has prosecuted the accused (respondent nos.1 to 3 herein) inter alia, under section 500 I.P.C. The evidence of the complainant was completed on 12.8.2003 and the case was fixed for further evidence of the complainant on 12.11.2003 on which date the complainant sought adjournment which was granted. The case was then fixed on 17.12.2003 and on this date also the complainant sought an adjournment which was granted. The case then was fixed for further hearing on 11.2.2004. In the morning session the complainant was directed to remain present in the afternoon session and when the matter was taken up in the afternoon session, the complainant had remained absent and was exempted. The learned J.M.F.C. then proceeded to note that the complainant had made out no case for adjournment and proceeded to close the case of the complainant and fixed the case of the complainant for recording the statement of the accused under section 313 of the Code on the next date.

3. As said before, the complainant has invoked the jurisdiction of this court under

Section 482 of the Code to correct or set aside the order dated 11.2.2004 of the learned J.M.F.C. closing the case of the complainant.

4. The petition was taken up on the point of maintainability. Shri Kantak, the learned advocate of the petitioner/complainant has fairly conceded that the powers under section 482 of the Code could be invoked only in case there is no other remedy available to the complainant or to any other party under the provisions of the Code.

5. It is next submitted that the complainant in the case at hand, has no other remedy under the said Code for closing the case of the complainant, closing the case being merely an interlocutory order against which the Code has provided no revision.

6. On the other hand, Shri Sardessai, learned Public Prosecutor has submitted that the power or jurisdiction under section 482 of the Code can be invoked only in the rarest of rare cases and this being not such a case where the complainant was given several opportunities to lead evidence, the said power need not be exercised by this court to correct the said order of the learned J.M.F.C.

7. Shri Kantak has made the said submission fairly that this court will not exercise its power under section 482 of the Code in case where there is other remedy available to a party under the provisions of the Code. Nevertheless a cursory look to the law on the subject would not be out of context.

Section 482 reads as follows:-

" Saving of inherent powers of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. "

8. There can be no two opinions that the power saved under section 482 is an extraordinary power and being so, could be used only in extraordinary cases. Way back in the case of **Khushi Ram v. Hashim and others** (A.I.R. 1959 S.C., 542) the Hon'ble Supreme Court had observed that the inherent powers of the High Court under section 561-A (now S.482) cannot be invoked in regard to matters which are directly covered by

specific provisions of the Code. The Supreme Court then had proceeded further and observed that the High Court was clearly in error in invoking that section in quashing a commitment proceeding which is a matter directly covered by S.215. Again in the case of **Pampapathy v. State of Mysor**e (A.I.R. 1967 S.C., 286) relied upon by learned advocate Shri Kantak the Supreme Court reiterated that the inherent power of High Court cannot be invoked in respect of any matter covered by specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that Section 561-A (now section 482) can come into operation. Yet again in the case of **Madhu Limaye v. State of Maharashtra** (A.I.R. 1978 S.C. 47) relied upon by learned Advocate Shri Kantak, the Supreme Court observed that the power could not be invoked where there are exceptions such as:-

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

9. A Full Bench of the Rajasthan High Court in the case of **Mohan Singh and others v. State** (1993 Cri.L.J. 3193) has reiterated the same position of law by observing that:

(i) The High Court possesses the inherent power to be exercised 'ex debito justitiae' to do the real and substantial justice for the administration of which alone court exists. But, such powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice;

(ii) That it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;

(iii) That the power is not to be resorted

to if there is no specific provision in the Code for the redress of the grievance of the aggrieved party; and

(iv) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

10. As seen from above, the common refrain, which flows from the above cases is the well established principle of law which is well settled that the power under section 482 is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party. The question, therefore, is whether the complainant had any other remedy provided in the Code to redress his complaint that the learned J.M.F.C. had wrongly closed his case without giving him an opportunity to complete his evidence.

11. The submission of Shri Kantak, learned advocate of the complainant, is that there is no such remedy available to the complainant under the provisions of the Code, closing the case of the prosecution being an interlocutory order, against which the Code has provided no revision. That

should take me to section 397(2) of the Code which reads as follows:-

" (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. "

12. I am afraid I am unable to accept the said submission of learned advocate Shri Kantak. Closing the case of the complainant by no stretch of imagination could be termed to be an interlocutory order since it substantially affects the right of the complainant to pursue his complaint. In the case at hand a remedy was available to the complainant to correct the order of the learned J.M.F.C. in case the complainant was otherwise entitled to correct the same by filing a revision petition. Shri Kantak then submits that he could also file a revision application directly to this court by not approaching the court of Sessions. I am not inclined to consider the said submission which could be considered, if at all a revision application is filed before this court.

13. Shri Kantak next submits that the petition under section 482 filed by him be converted into revision application. I am not inclined to do so. Next, Shri Kantak submits that there is no decision of this Court that closing the case of the prosecution is not an interlocutory order. If there is not, now there is.

14. In the light of the above discussion, in my opinion I am not inclined to invoke this court's jurisdiction under section 482 of the Code since the complainant is entitled to a remedy of revision to challenge the said order of the learned J.M.F.C. closing his case. Hence the application under consideration is hereby rejected.

sl. **N.A. BRITTO, J.**